

**NORTHERN TERRITORY LIQUOR COMMISSION**  
**DECISION NOTICE**

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**MATTER:** APPLICATION TO MAKE A MATERIAL ALTERATION

**REFERENCE:** LC2019/028

**LICENCE NUMBER:** 81403928

**LICENSEE:** **Palmerston Golf & Country Club Inc.**

**PREMISES:** Palmerston Golf & Country Club  
University Avenue  
PALMERSTON NT 0830

**APPLICANT:** Palmerston Golf & Country Club Inc.

**LEGISLATION:** Section 119(2), Parts I, IV and V of the *Liquor Act*.

**HEARD BEFORE:** Mr Richard Coates (Chairperson)  
Ms Jodi Truman (Deputy Chairperson)  
Ms Kenton Winsley (Health Member)

**DATE OF HEARING:** 26 March 2019

**DATE OF DECISION:** 26 March 2019

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**Decision**

1. For the reasons set out below and in accordance with section 119(8) of the *Liquor Act* (“the Act”), the Commission has determined to approve the material alteration to the licensee’s licensed premises as sought by the Applicant.
2. In accordance with section 119(10) of the Act, the licensee must not, while the alteration is being made, conduct business on the licensed premises except in accordance with arrangements approved by the Commission or the Commission’s delegate. Such arrangements are to be provided by the licensee to the Commission via the Office of the Director-General of Licensing with approval to be determined by the Commission, or its delegate, out of session prior to the commencement of any material alterations.
3. The licence including the material alteration will be issued immediately following the publication of this decision and, in accordance with section 31(1) of the Act, is subject to a condition that the licensee will not commence trade in the sale of liquor in the new retail liquor sales area under the licence until such time as the proposed premises are constructed and a Certificate of

Occupancy under the *Building Act* has been issued to the licensee authorising it to conduct business at the premises.

4. The licence including the material alteration will become operative once the applicant has presented evidence to the satisfaction of the Commission, or its delegate, that the premises have been satisfactorily constructed and the appropriate statutory approvals, including the issue of a certificate of occupancy, have been obtained by the licensee
5. The licensee will also be required to obtain the necessary approvals from the Northern Territory Fire Service in respect of patron capacity and fire safety issues prior to commencing operation

## **Reasons**

### **Background**

6. The Palmerston Golf & Country Club Inc. (“the licensee”) operates the venue known as the Palmerston Golf & Country Club (“the Club”). The Club is a venue that has been operating in Palmerston at its current premises for approximately the last 33 years. In that time the licensee has previously undertaken renovations and extensions to their Club premises without issue.
7. The licensee currently holds a Club (Incorporated) Liquor Licence (“the licence”) authorising the “sale of liquor:
  - a. For consumption on or at the licensed premises by a member of the club or by a visitor in the presence of such a member.
  - b. For removal and consumption away from the licensed premises **only** to financial members of the Club”.
8. On 12 October 2018, the General Manager of the Club, Mr Matthew Hewett (“Mr Hewett”) wrote to the Acting Director of Liquor Gambling and Racing, namely Mr Mark Wood, advising the Club was “ready” to carry out the relevant renovations. It is clear that the licensee did not file an approved application under section 126 of the Act, however no issue was made before this Commission with respect to this failure and it is clear that the letter from Mr Hewett has been accepted by the Director General of Licensing (“the Director-General”) as an application for a material alteration pursuant to section 119(2) of the Act (“the application”).
9. The application before the Commission is for approval to make a material alteration to the premises to enable the licensee to commence further improvements to the premises consisting of adding an extension on to the current clubhouse building. This proposal was referred to as “stage 2” of the redevelopment of the clubhouse with the extension to allow for the provision of a new gaming room and bar.
10. The extension proposed is to facilitate 55 gaming machines which have previously been approved by the Acting Director of Liquor, Gambling and

Racing; as opposed to the 31 machines that the clubhouse currently accommodates. The licensee proposes that thereafter the area which is currently utilised for the gaming machines will then “revert” to indoor seating for food service.

11. The term “material alteration” is defined under s 4 of the Act as follows:

“... an alteration to licensed premises which:

- a. increases or decreases the area used for the sale of liquor or the sale and consumption of liquor; or
- b. involves structural alteration; or
- c. alters access to or egress from the premises; or
- d. alters the external appearance or facilities”.

12. In essence, the application seeks authorisation to conduct renovations to the premises which will result in structural alteration to the premises, alter the access to or egress from the premises and will alter the external appearance or facilities. It was made clear in the application that the material alteration proposed did **not** increase or decrease the area used for the sale of liquor or the sale and consumption of liquor. So much is clear by virtue of perusal of the “licensed area” marked in red as attached to the current licence.

13. Although Mr Hewett provided a letter to the Director-General with respect to this application in October 2018, it is clear that there were significant delays before the matter was finally referred to the Commission on 20 March 2019. For the purposes of this Decision Notice it is not necessary to detail the reasons for such delays, however in order to progress this application as quickly as possible for the applicant the Commission agreed to list this application for hearing at short notice on 26 March 2019.

14. The Commission was informed by the Director-General that a compliance history check had been conducted and there were no previous adverse history with respect to the applicant or associated persons.

### **Advertising and Objections**

15. In accordance with section 119(3) of the Act the Director-General considered it in the public interest to require the applicant to publish notice of the application. Details of the application were advertised in the Northern Territory News on Wednesday 30 January 2019 and Saturday 2 February 2019 as well as having signage displayed at the premises for a period of 30 days. There were no objections received during the notice period.

16. Section 119(5) also requires that the Director-General inform the CEO of the council within the area where the premises are located. Notice was therefore given to the Palmerston City Council (“PCC”); who did not object. Notice was also provided to the Department of Health (“DOH”), the Commissioner of

Northern Territory Police (“NT Police”) and the Northern Territory Fire & Rescue service (“NTFRS”); who also did not object.

## Public Hearing

17. As earlier noted the matter was listed for hearing on 26 March 2019. The Applicant was represented by Mr Hewett and Ms Tania Chin appeared on behalf of the Director-General.
18. Pursuant to section 53 of the Act; the Commission is not bound by the rules of evidence and may inform itself in the manner it considers appropriate and conduct the hearing, or part of the hearing, by use of telephone or online facilities. A hearing must also be conducted in public unless the Commission considers that a public hearing is likely to cause undue hardship to a person. No such submission has been made to this Commission and there is no evidence to suggest any such hardship. As a result the application proceeded as a public hearing.

## Assessment of the Application

19. As earlier noted, there were no objections to this application. Despite there being no objections, it is important to recall that the Act makes clear under section 6B that it is the Applicant who bears the onus of satisfying the Commission that the approval of the application meets the public interest and community impact test.
20. As is clear from section 6(1) of the Act; when considering or determining an application under the Act in respect of licensed premises, this Commission **must** apply the public interest and community impact test as relevant to the application. Section 6(2) of the Act provides that:

“For subsection (1), the public interest and community impact test requires consideration of the following objectives:

- a. harm or ill-health caused to people, or a group of people, by the consumption of liquor is to be minimised;
- b. liquor is to be sold, or sold and consumed, on licensed premises in a responsible manner;
- c. public order and safety must not be jeopardised, particularly where circumstances or events are expected to attract large numbers of persons to licensed premises or an area adjacent to those premises;
- d. the safety, health and welfare of persons who use licensed premises must not be put at risk;
- e. noise emanations from licensed premises must not be excessive;

- f. business conducted at licensed premises must not cause undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the neighbourhood of the premises or who are making their way to or from, or using the services of, a place of public worship, hospital or school;
- g. a licensee must comply with provisions of this Act and any other law in force in the Territory which regulate in any manner the sale or consumption of liquor or the location, construction or facilities of licensed premises, including:
  - i. by-laws made under the Local Government Act; and
  - ii. provisions of or under the Planning Act;
- h. each person involved in the business conducted at licensed premises must receive suitable training relevant to the person's role in the conduct of the business;
- i. the use of credit in the sale of liquor must be controlled;
- j. practices which encourage irresponsible drinking must be prohibited;
- k. it may be necessary or desirable to limit any of the following:
  - i. the kinds of liquor that may be sold;
  - ii. the manner in which liquor may be sold;
  - iii. the containers, or number or types of containers, in which liquor may be sold;
  - iv. the days on which and the times at which liquor may be sold;
- l. it may be necessary or desirable to prohibit persons or limit the number of persons who may be on licensed premises, on any particular part of licensed premises or in an adjacent area subject to the control of the licensee;
- m. it may be necessary or desirable to prohibit or limit the entertainment, or the kind of entertainment, which may be provided on licensed premises or in an adjacent area under the control of the licensee;
- n. it may be necessary or desirable to prohibit or limit promotional activities in which drinks are offered free or at reduced prices;
- o. any sale of additional liquor due to the grant of a licence or the relaxation of restrictive conditions will not increase anti-social behaviour.”

21. In addition, pursuant to section 6(3), the Commission must:

- a. consider the potential impact on the community in the area that would be affected by the outcome of the decision to grant or refuse an application or the changing of conditions of a licence and, in doing so, must have regard to:
  - i. the harm that might be caused (whether to the community as a whole or a group within the community) due to the excessive or inappropriate consumption of liquor; and
  - ii. the cultural, recreational, employment or tourism impacts; and
  - iii. the social impact in, and the impact on the amenity of, the locality of the premises or proposed premises; and
  - iv. the density of existing liquor licences within the community area; and
  - v. the volume of alcohol sales within the community area, and any increase in volume within the community area arising from the licence the subject of the application; and
  - vi. any other prescribed matter; and
- b. apply the community impact assessment guidelines.”

22. On 6 March 2018, pursuant to section 6A of the Act, the Minister by Gazette notice published community impact assessment guidelines for determining whether or not an application being considered or determined under section 6(1) satisfies the public interest and community impact test. Relevantly those guidelines are stated to

“... set out those matters that will be considered by the Commission when assessing the community impact of the application against the criteria set out in section 6A(1) of the Liquor Act”.

23. Those matters are identified as follows:

<b>Criteria</b>	<b>Matters to be considered</b>
The potential harm or health impact that may be caused to people, or any group of people within the local community area, due to the availability and accessibility of an additional liquor outlet.	Are there any ‘at-risk’ groups or sub-communities within the locality? This may include – <ul style="list-style-type: none"> <li>• children and young people;</li> <li>• Aboriginal people normally resident within the locality and those Aboriginal people that</li> </ul>

	<p>might be likely to travel to the locality from a dry community;</p> <ul style="list-style-type: none"> <li>• migrant groups from non-English speaking countries;</li> <li>• people in low socio-economic areas; and/or</li> <li>• communities that experience high tourist/visitor numbers.</li> </ul> <p>Are there any community building, facilities and areas within the locality? Such facilities would include:</p> <ul style="list-style-type: none"> <li>• schools and educational institutions;</li> <li>• hospitals, drug and alcohol treatment centres;</li> <li>• accommodation or refuges for young or disadvantaged people;</li> <li>• child care centres;</li> <li>• recreational areas;</li> <li>• dry areas; and</li> <li>• any other area where young people may congregate or be attracted to.</li> </ul> <p>What policies and procedures will the applicant implement to minimise any potential harm or health impacts to these 'at-risk' groups or sub-communities</p>
<p>Information about the location and area in which the premises is proposed to be so as to assess any social impact on the community. This includes information about the density of licensed premises within the community area.</p>	<p>This may include crimes statistics, social profile information and the location of existing licensed premises.</p> <p>This could also include traffic and pedestrian impact and any plans developed to address these potential</p>

	issues.
Volume	<p>This may include projected sales volumes and marketing analysis, liquor type and customer demographic (where applicable this should be provided for both on and off premises sales).</p> <p>The Commission will consider information available to it about the current alcohol consumption rates for the community area.</p>
Any cultural, recreational, employment or tourism benefits for the local community area.	Will the proposed licensed premises provide economic benefits, cultural, recreational or tourism benefits or any additional employment opportunities and to what level?
Why the grant of a relevant application is in the public interest and how the additional liquor outlet will benefit the local and broader community.	<ul style="list-style-type: none"> <li>• What additional services will be provided other than simply an additional outlet for the sale of liquor – this may include accommodation or dining?</li> <li>• Will the proposed licensed premises provide additional choices of service or products that are no available in the area?</li> <li>• Will the proposed premises provide liquor in a manner known to be safe and to minimise adverse impacts?</li> <li>• Will it use existing premises improve or add to existing premises or is it a new premises?</li> </ul>

24. As can be seen from the above, there are a large number of matters that this Commission must consider and that the Applicant must address (and satisfy the Commission of) under the new public interest and community impact test and guidelines. The guidelines do make clear however that:

“... the Commission has the authority to consider a broad range of issues specific to each application and flexibility exists to assess each individual application on its merits”.

25. With respect to this application, the Commission considers it relevant to note that this is not an application for a new licence. This is an application for a

material alteration that results in structural changes, but not an increase in the licensed footprint of the premises, nor an increase of the area upon which liquor will be sold and consumed. True it is that the proposed material alterations are likely to make the consumption at the premises more comfortable and inviting, but they do not enlarge the licensed capacity which already exists at the premises.

26. As a result some of the matters which would be highly relevant to an application with respect to new premises (or what might otherwise be termed an “additional liquor outlet”) or to an application to increase the licensed footprint; are not as significant with respect to an application such as this.
27. With respect to this application the Commission was concerned with the lack of detail provided by the applicant in support of its application addressing the public interest test and community impact assessment. As stated to Mr Hewett during the course of the hearing (and as a reminder to any and all future applicants) the burden of satisfying the Commission of the public interest test and community impact assessment is upon the applicant. It is not enough to simply say “there is no evidence” to suggest the public interest test and community impact assessment have not been met. It is for the applicant to ensure in a **positive** way that they are satisfied.
28. As a result of the Commission’s concern about the lack of positive evidence to assess these matters, further evidence was obtained during the course of the hearing from Mr Hewett. It is clear from that evidence that this not for profit business is endeavouring through its material alteration to increase the value of the premises to the community itself and to ensure that it is meeting the needs of its members and future potential members.
29. Mr Hewett made very clear that it was not the intention of the applicant to enlarge the licensed area but in fact to increase the space that is available inside for dining and to make the premises more attractive to its current members and also future members; including families. Mr Hewett also gave evidence that if permitted to undertake the material alteration it was the intention of the applicant to provide consistent access to meals during its trading hours, something it is simply not able to do at present due to low attendance numbers as a result of the current state of the premises.
30. Mr Hewett stated that it was the desire of the applicant to “bring the premises up to date” and to “provide a nicer facility for dinner and a social drink”.
31. It was clear from the evidence that right now the applicant could have just as many patrons on the premises under its current licence as it will be able to provide for post the proposed material alterations. The only difference being that such patrons will be able to be accommodated in far more comfortable premises and provided for by way of meals and a lounge area, rather than simply standing in the current bar and gambling areas, or outside.

## **The applicants' submissions**

32. The applicant submits that the proposed alterations:
- a. Will vastly improve the premises and ultimately improve the community asset for all members and visitors; and
  - b. Provide a much improved and modernised clubhouse with an increased area for indoor dining together with an increased area for the sports bar. The Commission notes this will provide an increased floor space for gambling, however as submitted by the applicant this is something that the applicant has already been separately licensed to do and is not the subject of this application.
33. The applicant also provided copies of its relevant policies and procedures for dealing with the appropriate supply of alcohol and compliance with relevant legislation and regulation. As earlier noted, there is no negative compliance history for these premises which have now been in existence for a number of decades.
34. Whilst the Commission accepts that an improvement in the current premises of the nature proposed by the applicant does bring with it a likelihood of an increase in numbers attending at the premises, and thus an increase in alcohol consumption, the Commission finds on balance that there is no evidence to suggest any potential harm or health impact may be caused to people, or any group of people within the local community area, due to the availability and accessibility of liquor as a consequence of the material alteration sought.
35. Further that there is no evidence to suggest that there will be a social impact upon the community to such an extent that it would merit a finding against this application.
36. As a result, the Commission determines that approval of the application satisfies the public interest and community impact tests, and accordingly the Commission grants the application subject to those matters outlined at the start of this Decision Notice.

## **Notice of Rights**

37. Section 120ZA of the Act provides that a reviewable decision is a Commission decision that is specified in the Schedule to the Act. A decision to approve a material alteration pursuant to section 119(8) of the Act is specified in the Schedule and is a reviewable decision.
38. Section 120ZC of the Act provides that a person affected by this decision may seek a review before the Northern Territory Civil and Administrative Tribunal. Any application for review of this decision must be lodged within 28 days of the date of this decision.

39. For the purpose of this decision, and in accordance with section 120ZB(1)(b) and (c) of the Act, the affected person is the applicant.

A handwritten signature in black ink, appearing to read 'Richard Coates', with a large, stylized initial 'R'.

**RICHARD COATES**  
Chairperson  
Northern Territory Liquor Commission

27 March 2019